

The Town-Council and the Parochial Board.

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## THE FACTS

BEARING ON

## THE CLAIM OF THE POOR

TO

1. THE POORHOUSE GROUNDS AND BUILDINGS ;
2. PAUL'S WORK MORTIFICATION ; AND
3. TRINITY HOSPITAL ;

AND

## DISSENT

FROM THE

REPORT OF THE LAW COMMITTEE OF THE COUNCIL  
REFUSING THE POOR'S CLAIMS,

BY

COUNCILLOR CURROR.

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APRIL 1862.

R35403

# THE CLAIM OF THE POOR

TO THE

## POORHOUSE GROUNDS & BUILDINGS, &c.

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By order of Council, motions fall to be taken up last of the public business on the programme. Unless the subject of a motion is generally deemed of sufficient importance, it has happened that a quorum did not remain till the end of a lengthened sederunt, to give it due consideration and deliberate disposal. Most important questions are at issue between the Corporation and the Parochial Board. A motion on the subject is to be moved by me at next Council meeting. From the way these questions have hitherto been treated by the Corporation, I apprehend that their importance is not generally understood. That the facts may be before the Council, and the motion deliberately taken up and disposed of according to its importance and merits, I submit this statement for each member of Council previous to the meeting. By this means, a knowledge of the facts will be gained by all previous to, and time saved at, the meeting.

The chief questions at issue are these: (1.) The right of the Parochial Board to the houses and ground now occupied by the poor, including therein right to the feu-duty of the Free North Church, part of the poorhouse grounds feued by the Corporation, and right to resume Forrest Road, also part of the poorhouse grounds, for the benefit of the poor; (2.) The right of the Board to the city bonds, forming the residue of Paul's Work mortification; and (3.) The right of the Board to Trinity Hospital, and the funds

thereto pertaining. These important questions—deserving the serious attention of the Corporation—will now be adverted to in the order stated :

# I. THE RIGHT OF THE PAROCHIAL BOARD TO THE POORHOUSE GROUNDS AND BUILDINGS, AND ALL THEREUNTO PERTAINING.

Previous to the passing of the Poor-law Amendment Act, in August 1845, the Corporation was bound to support the poor of the city “unbeggan ;” and down to 1740, the Corporation did so out of the funds specially appropriated by statute, grant, and otherwise to that purpose. But it having been found, about that year, “that the funds that are chargeable with the maintenance of the poor, though very considerable, are not sufficient, whence hitherto the deficiency necessary behoved to be answered and paid out of the common good,” it was proposed that “ane charity workhouse be erected, where all the poor should be accommodated, maintained, and employed at work, and that all the poor’s funds be thereto, and to no other use, applicable,” the Magistrates and Council approved of the proposal; and on 14th November 1739, bound the Corporation to pay “forever,” annually, out of the revenues of the city, £200 towards the expense of the workhouse; and made over to the manager of the workhouse the special poor’s funds, including “annual rents of sums of money, and rents of houses and shops mortified for the use of the poor,” and all sums that might thereafter be left for the use of the poor. On 11th June 1740, the Corporation in addition did “unanimously give, grant, and appropriate to the use of the said intended workhouse for ever, at least so long as the poor of this city shall be employed or maintained therein,” the park in which Bedlam then and now stands—that is, the whole ground now occupied by the poor, including Forrest Road and the site of the Free North Church. But the Corporation reserved right to make an avenue through the ground, and “right to a corner of said yeard” for laying causeway stones, “sufficient for the city’s use.”

On the faith of this grant, the benevolent subscribed large

sums of money, and the present charity workhouse or poor-house, and other buildings, were erected on the ground so given, granted, and appropriated; and from the date of it, the poor have been maintained therein—under the charge of the charity managers till 1843—of the Corporation from 1843 to 1845—and of the Poor's Board thereafter.

In 1801, the workhouse managers suggested to the Council, with the view of benefiting the charity, to feu out the poor's grounds. In 1819, they revived the suggestion, and in a representation to the Council, proposed that Bedlam, the hospital, and children's house (the present east division of the poorhouse), should be taken down, "and the ground feued by public roup, for the purpose of building—the charters to purchasers to be granted by the Magistrates, with concurrence of the managers, to be holden off the city, and the feu-duties and casualties to be taken payable to the treasurer of the charity workhouse, for behoof of the poor of the city" employed and maintained in the workhouse. It was part of the proposal that the pauper lunatics were to be removed from the grounds—a new children's hospital erected—a corner of the ground sold to widen Teviot Row—and the price thereof, and of the old material, applied "to the erection of the new building, or otherwise disposed of for the benefit of the" charity. The representation having been sent to the Lord Provost's committee of that day, that committee reported "their opinion that the plan proposed ought to be gone into, and that if the feu-duties are taken payable to the governors of the charity, the casualties of superiority, which will of course be taxed, should be reserved to the town, the superiors;" and on 17th February 1819, the Council approved of that report.

On 29th August 1833, the "Act to appoint Trustees for the Creditors of the City of Edinburgh" was passed. On 19th July 1836, the charity managers again moved for the removal of Bedlam and children's hospital to a more suitable locality, and approved of "the proposal for disposing of the present site of the buildings, for the purpose of raising funds to enable the managers to carry into effect this important public object;"

and appointed a committee to communicate with the Council and city creditors, and to report. The Council remitted the proposal to the Plans and Works Committee, who reported: "That as it is an object of great public importance, in which the credit and character of the city are no less concerned than the interests of humanity, to effect the removal of Bedlam from its present confined locality, to a situation in the country, with a proper extent of airing-ground, where the health and comfort of pauper lunatics may be better promoted, and the cure of the moral malady more likely to be accomplished—it is expedient and desirable to give every assistance to the managers of the charity workhouse in their endeavours to obtain funds for this purpose: *Approve of their resolution to sell or feu the present site of Bedlam, and all the space to the east of the road which intersects their ground, to enable them to raise such a sum as, with what is expected to be realised from the accumulated capital of the Morningside institution, may be sufficient to make provision for a new lunatic asylum; that it is the opinion of the committee that the Town-council should not hesitate to give up GRATUITOUSLY the contingent and remote interest which they have in this ground to the managers of the workhouse; without which cession the ground cannot be disposed of.* The ground possessed by the charity was conferred on the institution in perpetuity, so long as it shall be devoted to the purposes of the charity. It therefore appears that it never can be available to the city or its creditors so long as it is held by the charity, and employed to its present or a similar purpose. As it cannot be doubted that if the city's interest is not given up, the charity will continue to use the ground as hitherto, it appears to the committee that the Council make no sacrifice in ceding any right they may have; while, on the other hand, it would *be unfair to attempt to take advantage* of the desire of the managers to dispose of their ground, for the public purpose contemplated, by *insisting on any part of the price or FEU-DUTIES being made over to the town.* But while the committee recommend, therefore, that the ground should be *disponed irredeemably to the managers,* this should be done on the following conditions: 1st, That



the proceeds derived from the sale or feuing of the ground should be applied strictly in making suitable provision for pauper lunatics, providing a new children's hospital, and other purposes connected with the charity." "2*d*, That in disposing of the ground, stipulations shall be framed for the purpose of securing a road or street of not less than sixty feet in breadth, in continuation of the line of the south approach to the middle walk of the Meadows—if the Commissioners of Improvements shall resolve on carrying through this part of the works provided for in their acts." "3*d*, That the city-wall, which bounds Bristo Street, shall be removed, and a space of ground added to this street, so as to make it, in its whole length, of the uniform breadth of 45 or 50 feet." That report having been brought up, the Council, on 30th August 1836, approved *generally of the report*, subject, however, to such regulations in *the detail of disposing of the property, which is burgage*, as may be "arranged." The trustees for the city creditors, however, did not then give their consent.

On 27th July 1838, the City Agreement Act passed. This and the Trustees Act carried all heritable property whatever, belonging to the city, to the Trustees, in security and payment of the city's debts. Neither the Corporation nor their creditors sought the poorhouse and grounds under the statutory security. They sought the reverse. Prior to 1841, questions of ranking between the city and charity managers occurred, which were settled in 1842. These claims having been communicated to the trustees for the city creditors, they objected to the charity ranking, because "it appears the charity workhouse are already ranked as creditors of the city for sums amounting to several thousand pounds, and it appears extraordinary that these sums" (the mortifications afterwards claimed) "are not realised and applied in liquidation of the debt. In addition to this fund, there is the property of the charity workhouse, of very considerable value, which can be adjudged and sold for the benefit of the (workhouse) creditors."

Forrest Road was formed through the workhouse grounds in 1842–3, by arrangement between the Council and the public, and road trustees—all consenting unconditionally to

the ground being taken for the road, excepting only the charity managers, who, in the arrangement, reserved right “to resume the same at any time they may think proper, unless a purchase be afterwards effected thereof.”

In 1843 the Council brought an action of reduction and declarator against the charity managers, in which was narrated the contract of 23d February 1740, between the town or the charity managers, and on these averments: “That since the date of the said contract the management and direction of the funds, levied and appropriated for the support and maintenance of the poor within the burgh, has been assumed and exercised by the managers of the Edinburgh Charity Workhouse: That soon after the said agreement was entered into, a large hospital or workhouse was erected or provided, wherein a number of the poor of the burgh have been, and now are, maintained and supported: That the said managers and directors of the said charity workhouse have annually required the pursuers and their predecessors in office, to supply them with the funds alleged by them to be requisite to enable them to discharge the duty imposed on them by the foresaid contract; and the Magistrates and Council have been in the practice for many years of authorising assessments on the inhabitants of the city, the amount of which has been levied for and paid to the treasurer in office for the time of the said workhouse: That the pursuers have been advised that it was and is illegal, and *ultra vires*, of the pursuers and of their predecessors, to devolve permanently the administration of the poor on other parties; and that it is their duty to resume the exercise of the powers which statute has conferred upon them, and of the duties by the same authority imposed upon them, and to conduct the administration of the poor and poor’s fund according to the ordinary rules of law applicable to royal burghs: That the pursuers have accordingly, and for various other reasons, resolved to abandon the arrangements adopted by the foresaid contract, and to act in conformity with the legal obligations and duties so incumbent on them; and they have desired and required the managers and directors of the foresaid charity workhouse, defenders, to cease from interfering with the



management and administration of the poor and poor's funds, and to surrender to the pursuers the foresaid charity workhouse, and buildings connected therewith"—calls for production of the said contract, that it may be reduced, because, "it was *ultra vires* of the Magistrates and Town-council of the city, by whom the said contract was entered into, to enter into and execute the same, so as to denude themselves or their successors in office of the powers and administration vested in them by statute, and permanently transfer the said administration to other parties, or limit or fetter themselves and their successors in the exercise of their statutory duties, in reference to the maintenance of the poor, and it is not obligatory on the present pursuers or their successors in office;" and—for the reason stated—concluding, "That it *Ought* and *Should* be *Found* and *Declared*, by decree foresaid, that the pursuers, and their successors in office, have the sole and only right to manage and administer the poor and *poor's funds of the city*, and that they *are bound to manage and administer the same accordingly*, and notwithstanding of the foresaid contract, or of anything that may have followed thereon; and that the pursuers, and their successors in office, have the sole and only right to have and to hold the said workhouse, and whole buildings and grounds therewith connected, and are entitled to resume the possession thereof, and to use the same *for the benefit of the poor of the city*."

The charity managers entered appearance in the process, and by arrangement and concert on 25th May 1844, decree passed in favour of the Council, by which the Court reduced "a contract of agreement, bearing date the 23d day of February 1740, entered into by the pursuers' predecessors then in office, and certain parties therein named, as having full power and authority from the respective kirk-sessions within the burgh of Edinburgh, of the tenor libelled, or of whatever other date, tenor, or contents the same may be; and *decerned* and *declared*, and hereby *decern* and *declare*, the same, with all that has followed, or is competent to follow thereon, to have been from the beginning, to be now, and in all time coming, void and null, and of no avail, force, strength, or

effect—and to bear no faith, judicially or extrajudicially : And further FOUND and DECLARED, and hereby FIND and DECLARE, that the pursuers and their successors in office, have the sole and only right to manage and administer the poor and poor's fund of the city ; and that they are bound to manage and administer the same accordingly, and that notwithstanding of the foresaid contract, or of anything that may have followed thereon ; and the pursuers, and their successors in office, have the sole and only right to have and to hold the said work-house, and whole buildings and grounds therewith connected, and are entitled to resume the possession thereof, and to use the same FOR THE BENEFIT OF THE POOR OF THE CITY."

On 3d June 1845, within two months of the passing of the Poor-law Amendment Act, the Council exposed to public view the site of the Free North Church, and leased the same to that congregation for £35 per annum.

The Poor-law Amendment Act passed in August 1845. By the 52d section of the act it is provided, "That where any *property whatsoever*, whether heritable or moveable, *or any revenues*, shall, at the time of the passing of this act, belong to, or be vested in" "the magistrates and town-council of any burgh, or commissioners, trustees, *or other persons*, on behalf of" "the magistrates and town-council, under any act of Parliament, or under *any law or usage, or in virtue of gift, grant, bequest*, or otherwise, for the use *or benefit of the poor of such parish or burgh*, it shall, from and after a time to be fixed by the Board of Supervision, be lawful for the parochial board of each such parish" "*to receive and administer such property and revenues*, and the *right thereto shall be vested* in such parochial board ; and the town-council, commissioners, trustees, or other persons, are hereby authorised *and required*, either to continue to hold all such property and revenues for the  *behoof of such parochial board*, or to make, grant, subscribe, and deliver such dispositions, assignations, and conveyances of all such property and revenues, *as may be necessary to enable such parochial board to administer the same*, for behoof of the poor of such parish."

The Board of Supervision fixed that the time at which the

property of the old Board became the property of the new, was the day of election of the first Board under the act.

On 15th, 16th, and 17th October 1850, the Council, notwithstanding the terms of the act just quoted, executed a disposition in favour of the Free North Church, of the site so sold, and on this disposition the disponees were infeft on 10th December 1856.

On 1st October 1857, a committee of the Parochial Board having investigated this transaction, reported "their unanimous opinion that the disposition granted by the Council to the Free North Church trustees, of part of the poorhouse grounds, was *ultra vires* of the Council, and an unwarranted infringement of the rights and interests of the managers of the poor." On 2d October 1857, the Board approved of the report; and on 24th October, sent copies thereof to the Council in a letter, stating that the managers "are willing to believe that the foresaid disposition must have been granted in error, seeing the managers for the poor have been in possession of the ground under the grant for considerably upwards of one hundred years; and they trust that it was only necessary to call the attention of the Council to the facts, to induce them to restore the property, or at least make compensation to the managers for the value of it."

The Council very wisely sought the advice of counsel in reference to the claim, and a long case was accordingly prepared by the city-agent, and submitted to the present Solicitor-General, and Mr A. Burns Shand, advocate, for their opinion. The statements in the Council's memorial are disputed in some particulars, which apparently influenced the learned counsel consulted in the opinion given. In particular, the Corporation averred that the site feued by them to the Free North Church was not then required for the benefit of the poor, while the Board have as confidently averred that at no time since the erection of the charity workhouse have the grounds been more than sufficient for the necessities of the poor occupying the same. The decree declaring the ground to be held and possessed by the Corporation for the benefit of the poor taken *in foro* and by consent in 1843, and the agreement under

which the poor gave the use of the ground for Forrest Road, and their reserved right to resume it, was not sufficiently brought under counsel's notice.

Assuming, however, the statement in the case for the Incorporation, the counsel consulted were asked to answer these questions: (1.) "Have the charity workhouse buildings been validly and legally transferred to the Parochial Board, and are the Corporation bound to continue to hold the same for behoof of that Board, or to execute and deliver such conveyance thereof as may enable the Board to administer the same in terms of the Poor-law Amendment Act? or, (2.) Are the Corporation entitled to resume possession thereof, or to require a reasonable consideration, in the way of rent or purchase-money, from the Parochial Board in respect of their being allowed to use and possess the same?" To which counsel answered: (1 and 2.) "In virtue of the Poor-law Amendment Act, the Parochial Board of the City Parish are entitled to the benefit of such property as at the date of the passing of the act belonged to, or was vested in, the Magistrates and Town-council for the use and benefit of the poor of that parish, and the rights of the City Parish and the memorialists, in regard to the different subjects mentioned in the memorial, thus depend upon the question, whether these subjects in August 1845 belonged to, or were vested in, the memorialists for the use and benefit of the poor of the City Parish. In regard to the charity workhouse buildings, and the ground upon which they stand, lying to the west of Forrest Road, we think the Parochial Board are entitled to retain their possession, these subjects having been truly held by the Magistrates and Council at the date of the Poor-law Act, for behoof of the poor, and having as such been given over by them to the Board. Previous to 1845, the care of the poor and the administration of the poor funds and property having been in the hands of the magistrates, we think that it was at any time in their power to have removed the resident poor from the premises then in use, to such other premises as they might provide as being more suitable; and if, in this way, prior to 1845, the city poorhouse had been no longer occupied by the poor, we think



the city would have been entitled to resume and retain possession of the poorhouse and grounds. This not being, however, the state of the fact, but, on the contrary, the poorhouse, which was in great part built by means of voluntary subscriptions, having been held by the magistrates in 1845 for behoof of the poor, we think that the Parochial Board were entitled to obtain possession of it."

*Questions* (3.) "Were the conveyances to the Middle District Road Trustees, and to the Free New North congregation, valid and effectual; or can the title now held by these parties be impugned or challenged by the Parochial Board? (4.) Have the Parochial Board any claims upon or against the memorialists for or in respect of the feu-duty, or other payments made or to be made by the parties mentioned in the preceding query, under the concluded transactions between them and the memorialists? (5.) Has the Parochial Board any right to take possession of the Forrest Road or site thereof, or have they any right therein, or title thereto, except to use it as a road? (6.) Are the memorialists, under the reservation contained in the Act of Council of 1740, or otherwise, entitled to insist on the Forrest Road being kept and continued as a road for the use of the inhabitants of the city and of the general public?" To which counsel answered: (3, 4, 5, and 6.) "We are of opinion that the conveyances to the Free New North congregation, and to the Middle District Road Trustees, of portions of the ground at one time held in connection with the poorhouse, are valid and effectual, and that the Parochial Board cannot effectually challenge the title held by these parties, or obtain right to the ground now held by them; and that the Board have no good claim against the memorialists in respect of the feu-duty, or other sums paid or payable on account of these subjects. "The original appropriation of a part of the city's property for the erection of a poorhouse, and for the use of the poor, does not appear to have been made by any formal deed of conveyance in favour of any particular parties, but is contained in the Council records, and constituted by a minute of Council, dated 11th June 1740. At that date, it was incumbent upon the Magistrates and Council themselves to provide



for the maintenance and support of the poor, and they were no doubt entitled to allocate such of the city ground as they might find necessary for the time for the use of the poor. They had it then in view to transfer the maintenance and care of the poor, which they were themselves bound to undertake, to a body of directors or managers, the precise constitution of which does not seem to have been well defined ; and as a part of the arrangement then contemplated, a contract of agreement, dated 23d February 1740, seems to have been entered into between the Magistrates and Town-council and the kirk-sessions of the several parishes within the city. By this agreement particular arrangements were fixed in reference to the collection of the poor-rates, church-door collections, and other poor funds, with a view to the administration of these by a new body of directors and managers, upon whom also was to be devolved the management of a large hospital or workhouse "for the more regular maintenance and employment of the whole poor of the said city, and for taking proper care of the orphans and foundlings." It was with reference to the agreement thus entered into that the appropriation of the ground now in question took place, and the terms in which it was made were thus expressed : 'To the use of the said intended workhouse or hospital for ever, at least so long as the poor of this city shall be employed and maintained therein, *in manner settled by articles of agreement* entered into in that behalf between the Magistrates and Council of this city, and the several kirk-sessions thereof.' We think this appropriation limited in its character, and entirely dependent upon the continuance of the mode of administration of the poor and poor's funds which had been then agreed to, and with reference to which only the appropriation of the ground was agreed to and made ; and we are of opinion that the decree of reduction obtained by the Magistrates and Town-council in 1844, by which the agreement of February 1740 was declared to be void and null, substantially reinstated them in the position which they had held prior to that agreement being entered into. The result of the decree of reduction was that the magistrates were again left with the entire administration of the poor and the poor's funds ;

and, as already indicated, we do not think their proceedings could have been effectually challenged either if they had thought fit to change the position of the workhouse and grounds altogether, and resume possession for the city of the ground which had been since 1740 appropriated to the poor; or, if they had resumed possession for the city of any portion of that ground *no longer really required for the maintenance of the poor*. At the same time we may observe that, as regards the poorhouse itself, matters were truly not entire; and the buildings having been erected in great part by private subscription for the special purpose of a workhouse upon the city property, we think that the city could only have resumed possession of these buildings upon providing others equally suitable, and probably of equal value, with those so resumed. It seems clear that the ground given off to the Free New North congregation, and also to the Middle District Road Trustees, *was in truth in no way required for the use or accommodation of the poor when so given off*, the pauper lunatics and children who had previously been maintained upon the ground adjoining the workhouse having been removed and maintained by the magistrates elsewhere. And on the whole, we are of opinion that the magistrates were entitled to resume and dispose of the ground as they have done. There is a speciality in regard to the ground occupied by Forrest Road, which we also think material—namely, the reservation in the original appropriation of 1740, of a right to make such a road; and we think that reservation, apart from the other grounds of our opinion, sufficient to entitle the memorialists to maintain that the road should be kept up as it at present exists.”

*Question* (7.) “Are the memorialists, with or without the concurrence of the Parochial Board, entitled to appropriate the site of the road to any other use or purpose than a roadway or avenue, and to deprive the public of the use and enjoyment thereof?” To which counsel answered: “We think the memorialists, with the concurrence of the Parochial Board, may be entitled to appropriate the site of the Forrest Road, looking to the terms of the agreement upon which it was formed; but

we do not think that either the Magistrates and Town-council or Parochial Board are entitled of themselves to shut up the road, and resume possession thereof."

*Question.* "Generally, has the Parochial Board any right in, or claim to, any of the said subjects, or against the memorialists or any others, under or in respect of the transactions which have been detailed in this memorial? To which counsel answered: "This question has been already answered in the negative."—The opinion of E. F. MAITLAND; ALEX. BURNS SHAND. *Edinburgh, 1st April 1858.*

In 1861, the Parochial Board, sensible of the inadequacy of the old poorhouse buildings to meet the necessities of the poor, and the obligations of the Board to them under the acts of Parliament, took under consideration a motion to remove the main or entire establishment from the old buildings to buildings of modern construction, with sufficient airing-grounds, out of, but as near to, the city as possible; and on 8th February 1861, "to enable the Board deliberately, and with a due regard to all the interests involved, remitted to the Law Committee to inquire and report on all questions now pending between the city and the Board, or likely to arise in the event of the main or entire establishment being removed furth of the city; and, so far as practicable, the terms on which these questions might be arranged amicably between the city and city creditors and the Board." A report was accordingly returned on the questions at issue, recommending an amicable arrangement of the same. The Law Committee of the Parochial Board, in approving of that report, "recommended that as the questions at issue are between two public boards, the Town-council should be invited to a conference with this Board, with a view to an amicable arrangement of the claims, either privately or by reference to a counsel of eminence." The Board approved of the report, and in consequence it was furnished to the Council, and a conference invited.

The Council having remitted the Board's communication to the Law Committee, that committee returned on April current a report "recommending the Council to refuse to entertain the claim by the City Parochial Board to (1.) Paul's Work mort-

fication, with the revenues thereof since 1851 ; (2.) The past and future feu-duties payable by the Free North congregation for the site of the church ; and (3.) the Committee further report that they are not in a position to entertain the claim to the charity workhouse grounds." I dissented from that report in committee, and, at meeting on 15th April 1862, gave notice of a motion for next Council meeting, as follows: "That the resolution of the Parochial Board, approved of by general meeting of the ratepayers, to remove the poorhouse and lunatic wards out of the city is commendable, and no obstacle to its accomplishment should be raised on the part of the Corporation : That the Council being trustees for the community of the city of Edinburgh, and the Poor's Board being trustees for the ratepayers of same community, any litigation between these public trusts becomes substantially a litigation by men against themselves, the expenses on both sides falling to be paid out of the pockets of same community of individuals, and hence can result in no benefit but to the agents conducting it, who, as such, are not beneficiaries under either trust : That the pending questions between the Corporation and Poor's Board trusts requiring to be settled before the removal of the poorhouse out of the town, should be arranged extrajudicially; and with that view that the treasurer and clerk, or a committee, be appointed, with powers to meet the chairman or a committee of the Parochial Board to arrange the same ; and failing such arrangement : That as the Council have already been advised on the main question by the Solicitor-General, and as the Parochial Board have indicated a willingness to settle that question in terms of the opinion obtained on the Council's memorial, as the same may be explained by the Solicitor-General himself—and generally to refer all questions between the two trusts to the Solicitor-General as sole referee—with power to the treasurer and clerk, or committee, to meet the Board in the same spirit, and to join with the Board in entering into a reference of all questions between the trusts to the Solicitor-General."

Having submitted this narrative of the facts more especially



applicable to the poorhouse and grounds, but applicable also to the other questions at issue, I will now state why I cannot concur in the report of the Law Committee of the Town-council, so far as this branch is concerned, and then take up the remaining questions at issue.

I cannot concur in the committee's report, "That they are not in a position to entertain the claim to the charity work-house grounds," because (1.), The committee then had, as the Council now have, the whole facts before them, and the opinion and advice of the counsel consulted by themselves, to guide them on the law applicable to the facts ; and if the committee are not now in a position to dispose of the claim, they never can be. The claim was fully before them, with the facts and the law, and it was their duty to dispose of it on the merits. (2.) The facts and the law should have led the committee to entertain the claim, and the Council to approve of such a report, and to forward the same and the documents, with a recommendation to the city creditors also to entertain it. (3.) The minute of the Board asked a conference for amicable arrangement, which the Committee's report summarily and without reason declined. (4.) It was explained in committee that the Board were understood to be prepared to enter into the arrangement approved of by the Council in somewhat similar circumstances, in 1836, by which the ground would be feued by the Board, the feu-duties being payable to the poor, and the casualties of superiority (to be taxed) should be paid to the corporation ; or that the Board would settle the question as to the grounds, in terms of the Solicitor-General's opinion above quoted, as the same might be explained and confirmed by himself on a correct statement of the facts ; or that the Board would refer all questions at issue between the two Boards, to the Solicitor-General, the senior counsel consulted by the Corporation themselves ; but the report is practically a refusal of all amicable overtures on the part of the Board, and necessarily drives both Boards to an action of declarator in the Court of Session, which, while it necessarily carries away the funds of the Corporation and ratepayers, is



not calculated to benefit either, and is therefore a palpable waste of public trust-funds. (5.) If such action be raised, the Corporation has no defence to it. It was argued with paternal anxiety in the committee, that the original grant *was conditional* on the poor being maintained on the ground, in terms of the agreement of 1740 ; that being so, the ground, with the condition, only passed by the Poor-law Act to the Parochial Board, and that consequently the Board only now enjoyed it subject to that condition, and their removal elsewhere with the poorhouse would send the property back to the Corporation. But that assumed a state of facts that did not exist. No doubt the original grant was conditional on the poor occupying the ground. But the decree taken in concert with the managers for the poor, in 1843, was an *unconditional decree* "for the benefit of the poor of the city." The bargain in 1843 completely removed the condition relied on in the original grant. The Corporation, under title so declared to be for the benefit of the poor, held the property at the passing of the act; and the property, with its declared poor's character, passed by the act to the Board. (6.) The property being, under the Corporation's own decree, declared to be poor's property in 1843, they could only hold or dispose of it, or any portion of it, thereafter as poor's trustees, and for the benefit of the poor. They sold it to the Free North Church, within two months of the passing of the act, in their corporate capacity ; and as such, have since drawn and pocketed the feu-duties. This was a breach of a declared trust in the poor. But counsel is of opinion the Corporation were entitled to do this; only, however, because the ground was not needed for the poor, and on the assumption that the corporation had provided sufficient and permanent accommodation for the poor elsewhere. The Corporation did not do so. The opinion of counsel assumes the statements of the memorial as facts. The memorial gives an erroneous statement of the facts, and hence the opinion is not to be relied on in reference to this question. After the decree they could only sell as poor's trustees, bound to account to the poor for the price. But (7.), it was explained in committee that the Board, to save litigation, were quite agreeable

to forego their claim to the feu-duties, past and future, and to the site of Forrest Road, for an amicable settlement. The proposal on the part of the Board was fair and reasonable, and a report in favour of it ought to have been returned, and not a refusal of the claim. (8.) The claim to Forrest Road is not reported upon at all, and the opinion of counsel in reference to it is also based upon an erroneous, at least not a full, statement of the facts, and is not therefore to be depended on. (9.) The proposal of the Board to remove the poorhouse furth of the city, and the paupers, sane and insane, from elose, confined, and insufficient houses—some of which have been reported on as insuffieient by the proper authorities—to modern, airy, and commodious houses, erected under the statutory authority and sanction—which cannot be aecomplished till the questions at issue about the present houses and grounds are settled—called for a definitive, and not an indefinite report like that of the committee, more especially seeing that the matter has been before the Council now for ten months. (10.) The interests of the eity called for a definitive settlement of this matter. It is plain that, if not settled, the Board will retain possession of the grounds, as it is not to be expected the poor are to east at the feet of the Council, it may be, £20,000 worth of their property. And as the lunatic wards are condemned, and a new asylum must be built, the refusal of a settlement of this question will result in a new lunatic asylum being erected on the present ground in the centre of the city, when every feeling of humanity to the patients dietates their removal to the country ; to say nothing of the advantages to be gained to the community by the removal.

## II. CLAIM OF POOR BOARD TO THE CITY BONDS, FORMING THE RESIDUE OF PAUL'S WORK MORTIFICATIONS.

In or about the year 1479, Thomas Spence, Bishop of Aberdeen, founded a hospital in Leith Wynd, "for the reception and entertainment of twelve poor men," and dedicated it to the Virgin Mary, by the appellation of "the

Hospital of Our Lady in Leith Wynd." He endowed the same with lands and rents to the amount of £119, 15s. Scots per annum, which, before the year 1573, by the benefactions of others, was increased to the yearly sum of £137, 19s. 7d. Scots.

On 7th August 1612, the great charter of kirk livings was granted in favour of the city. That deed confirmed the previous grants to ministers, college, schools, and to the "poor, aged, decrippped, and indigent persons, orphans, and infants destitute of parents within the said burgh, of whatsoever dates, tenor, or contents the same be;" and "*of new* gave, granted, dispooned, mortified, and perpetually confirmed" to the Council, among other subjects, "All and hail the Hospital of Saint Paul's Work, lying at the foot of Leith Wynd, upon the east side thereof, with all lands, tenements, kirks, prebendaries, &c., belonging thereto, wherever the same ly within the kingdom, to be intromitted with and disposed upon by the said provost, baillies, council, and community, and their successors, for sustaining" . . . "of the aged, decrippped, orphans, and poor within the said burgh and hospitals thereof."

In 1619, the Council entered into a contract with William Dickson, of the city of Delft, in Holland, to instruct the people in making woollen stuffs, and "to take such poor boys and girls as the Council should think proper to put to him," the Council paying 13s. 4d. Scots money weekly for the space of one year for each such boy and girl, and to give each of said children a suit of apparel, three shirts, with proper bedding and furniture necessary for the house. For disposing of the stuffs made, the Council undertook to erect a sale hall.

In implement of this contract, certain houses were erected on St Paul's Work, at the foot of Leith Wynd, which cost £1359, 4s. 6d. Scots. This being deemed a most laudable undertaking, divers benefactions were made to it. To encourage these, the Council gave a formal constitution to the work, the preamble of which is: "For sua meikle as the provost, bailies, counsell, and deykins of craftes for introducing of vertue within this country, quhairby ane number of poore ones, quho has no

means for upbringing and educating of themselves in sum vertuous trade, that thairafter they micht win thair living with sum industrie, and not become beggaris, and burdenable to these pairts quhair they are borne and bred, had fund that the inbringing of all sorts of manufactoris of wool to be the most expedient way baith for relief of the said poore, and for training thame up in vertue, that they micht no longer prove chargeable to the cuntrey, but micht hapilie becum gud members of the comonweil,”—and having “buildit certain houses at the foot of Leith Wynd, at the place callit Sanct Paul’s Wark, and had brocht sum strangers to have been the beginners of such laudable intentionis, and thair beind a number of honest men, zealouslie for the gud of the comonweill, that way inclinit, willing to bestow of thair own proper means for the entertainment of certaine poore to quhome they ar otherwaiyes subject, and to bring them upon the said work till they may win thair awn living thamselvis.” On this preamble, the Council ordained that a certain donation was to give the donor a right of presentation of boys. To encourage donations farther, the Council declared that the profit to be made upon the work was to “redound to the entertainment of ane or more poore, as the same sall be fund sufficient”—and when the Council had a surplus of funds, these were to be employed “upon heritage to be mortified to the said warke foresaid.”

Two days after the passing of the constitution, benefactions to the extent of 2500 merks were made to it, and other considerable sums were subscribed and dedicated to its encouragement.

Mr Robert Johnston of London, by will dated 30th September 1639, among other bequests to the Corporation of Edinburgh, made the following: (1.) “I geve and bequeath unto the provest, and bailliffes, and common counsell for the tyme being, of the cittye of Edinbrough, in the said kingdome of Scotland, one thousand pounds starlinge, to bee ymployed in stocke to *sett the poore of ye said cittye at worke*, and do appoint the increase of the stocke to be *distributed among ye poore of the said eittye yearly* ;” and (2.) “I giue and bequeath



unto the said provest, bailiffes, and common counsell of Edinburgh one thousand pounds starlinge more—they putting in sufficient securitye unto my said executors and supervisor to employ the said some in a stocke or mortgage of landes *towards the reliefe of the poore people of the said cittie of Edinburgh in perpetuities.*” By the same will he bequeathed “unto the provest and bailiffs of Dundee, in the said realme of Scotland, uppon their putting in of sufficient security unto my said executours and supervisor, the some of £1000 of layfull money of England to be employed in a stocke or wadsett of land in perpetuities *for ye yearlie maintenance of the aged and impotent people of the said towne of Dundee.*” The city of Edinburgh having got their legacies, on 8th December 1641, the Council appropriated £1000 of these mortified moneys, and appointed that sum to be employed for setting poor people to work in Paul’s Work; and on 26th January 1642, the Council destined another £1000 for the poor of the city of Edinburgh. On 9th February 1642, the Council, with consent of the ministers and kirk-session, appropriated both these sums to Paul’s Work. The revenue only was given; for the undertakers of Paul’s Work granted bond for the principal to the Council.

In 1683 the Council converted Paul’s Work from a woollen to a linen manufactory, in which boys were to be trained up in virtue and industry, and entered into a tack of the work to Sir William Binny. This inversion of the mortification was questioned in Court, but sustained, on 22d November 1698, by a majority of one.

In 1716, the Ale-Duty Act was passed for this, among other purposes, viz., of “setting an annual fund of Three hundred pounds per annum towards employing and maintaining the poor of Edinburgh, and adjacent counties, which shall commence and grow due after the 1st day of July 1718.”

On 25th June 1718, the Council issued this proclamation: “That by the late Act of Parliament, containing per favors of this city the duty on ale, &c., there is a fund provided for maintaining and employing the poor of this city, and of the shires of Edinburgh and Haddington, commencing from the 1st



day of July next: Therefore the Lord Provost, Magistrates, and Council, do hereby strictly command and charge all the vagrant and begging poor within the city and suburbs to enter themselves *to the workhouse prepared for them in Paul's Work*, on the said 1st day of July next, where provision is made for their maintenance, to be employed as the said act directs."

In 1722 the Ale-Duty Act was continued specially, because, among other proceedings, the magistrates "have built and repaired a large house for accommodating the poor to be employed in manufacture." The act was extended for nineteen years, for this, among other purposes, viz., "for maintaining and employing the poor."

On 24th March 1731, the Council passed another act, to the effect: "That the begging poor shall be taken up, entertained and employed in the said workhouse, at the rate of 1s. 9d. sterling per week;" "and to the ends and purposes hereby intended of entertaining and employing of the poor of this city and liberties, and shire of Edinburgh, in manner before mentioned, may be effectually answered; and that all vagabonds, vagrants, and sturdy beggars, or others, may be effectually restrained from begging within this city and liberties, or within the shire of Edinburgh, the Council, as managers and administrators of the new gift of two pennies Scots upon all ale and beer," "Doe enact, that in so far as the several funds appointed by this act to be paid into the overseer of the poor for answering the purposes before mentioned, shall fall short of the expense that shall be defrayed on that account, the sum of £300 appointed to be paid under the act, at least so much thereof as is not already appropriated by the Council, with consent of the overseers, for another purpose of the same kind, and the appropriation thereof continued, shall be paid in monthly to the said overseer." But, "if upon tryal it shall appear that the several funds hereby appointed for defraying the expence of the said charity workhouse, and purposes before expressed, shall not be sufficient therefor;" "the Council have agreed and concerted with the Lords of Session, to lay on and impose such other funds for making

good such deficiency," "according to the laws and acts of Parliament made on that behalf."

In 1738, the proposal for the new charity workhouse was made to and accepted by the Council. In 1740, all the poor's fund and property of every description were appropriated for the support of the new workhouse, including "annual rents of sums of money, and rents of houses and shops *mortified* for the use of the poor of the said city." On 11th June 1740, the present poorhouse grounds were likewise given, granted, and appropriated "to the use of the workhouse for ever, at least so long as the poor of the city shall be employed and maintained therein."

On 2d May 1750, the Council "having had under consideration the present state of the hospital, called St Paul's Work, founded by Sir Thomas Spence, Bishop of Aberdeen, anno 1479, who then mortified several houses and grounds annual for the support thereof, and also that Mr Robert Johnston, Doctor of Laws at London, did legate and bequeath to the Council in perpetuity the sum of £1000 sterling of capital stock, and the inhabitants of Edinburgh did largely contribute, and several others made donations, all for the charitable purpose of training up the young, poor, and indigent of the city to industry, the interest of which mortification and contribution has been hitherto applied by the Council for the ends above mentioned; and the Council also having had under consideration a memorial 'for the managers of the charity workhouse,' concerning their training up such number of orphans, male or female, within the said workhouse, as the foresaid funds of Paul's Work shall be able to maintain and educate; and the Council, judging from the experience they have of the good management of the said workhouse, that this fund, in their hands, under the direction after mentioned, is more probable to answer the good design of the donors than it has hitherto done, while in the hands of private undertakers, therefore" disposed, "for seven years from Martinmas 1748, the whole annual revenue of the said hospital called St Paul's Work, and of the other conjoined funds in use to be paid thereto," to the charity workhouse treasurer, to keep

"twenty such children as are entitled to the City of Edinburgh Charity," to be lodged in separate wards, educated separately from the other poor children, wear a different dress, and to be called the Children of Paul's Work.

On 27th June 1750, intimation by order of the Council was made, "by the precenters of this city on Sabbath next, that the Council have conveyed the funds of Paul's Work to the treasurer of the charity workhouse, for the space of seven years, for the maintenance, clothing, and education of the children of decayed burgesses; any such who have children may apply to ye Councel, in order to their being admitted."

On 26th August 1752, the Council having reported on the account of stock and revenue of Paul's Work Hospital, ordered the balance of £4, 12s. 10d., due by the treasurer, to be paid to "Mr James Stirling, present treasurer of Paul's Work, for behoof thereof;" and found that the stock handed over by the old treasurer amounted, in bonds and cash, to £3215, for which they ordered a city bond to be granted "in favour of Mr Stirling and his successors in office, for behoof of the said Paul's Work."

From that date to 1781, the revenues from Paul's Work were accounted for to the charity managers. On 6th June 1780, "Mr Richard Richardson, treasurer of the charity workhouse of this city," laid before Council "accounts of feu-duties, payable by certain proprietors, or possessors of Paul's Work and Saint Ninian's Row, to the charity workhouse." And the Council "disponed, conveyed, and made over to the said Richard Richardson, and his successors in office, for the use and behoof of the said charity workhouse, all bygone arrears, and the said annual revenue for the space of seven years complete, from Whitsunday 1781."

In 1787, the managers presented a petition to the Council, in which they stated that they had all along got the whole revenue of Paul's Work, and asking payment of the arrears for Forglen's Park. On 2d June 1787, a committee of charity managers was appointed to thank the Council for having appropriated the whole funds of Paul's Work Hospital for the use of the workhouse, and to entreat the Council "to order

payment of what arrears may be due from the revenue of Forglen's Park, which makes part of the fund of the Paul's Work Hospital;" and on 25th July 1787, the Council "authorised the chamberlain to settle the foresaid matter with the treasurer of the charity workhouse." Obstacles to the payment apparently afterwards arose, for a committee of managers met the Lord Provost and Magistrates on 23d February 1790, and a reference was made of the matter of Forglen's Park to the Honourable Henry Erskine, and William Galloway, Esquire, one of the magistrates. The referees seem to have decided in favour of the workhouse, for these rents were ever afterwards accounted for to the workhouse till 1822, when they were temporarily withheld as against a debt claimed by the city from the charity managers.

By the Royalty Extension Act 1809, the Council came under obligation to pay certain sums in lieu of rates from 1803, to St Cuthbert's parish, for portion of that parish taken into the royalty, the Council having right to reimburse themselves out of the poor's assessments. The Council paid these sums annually, from 1804 to 1820 inclusive, without assessing or retaining anything in respect of them out of the rates. On 21st February 1821, the Council claimed the advances so made from the charity managers, then amounting, with periodical interest, to £6319, 18s. 9d.

The charity managers resisted the payment. The Council were obligants; the Council had the power of assessing for the sums paid; the Council had not assessed for a shilling more than the necessities of the poor required. All the money given to the charity managers to disburse had been disbursed, and liability beyond that was denied. In this state of matters the Council withheld the yearly payment of £200 given to the charity workhouse, and £10 of feu-duty for Forglen's Park. But an arrangement was come to on 20th February 1822, and these sums were ordered to be paid to the charity managers.

On 27th July 1838, the City Agreement Act was passed. The charity managers, as poor's trustees, insisted in their claim to be ranked upon the city funds, along with other creditors, in respect of the mortifications and dedications for



behoof of the poor. Their claim having been remitted to, and investigated by, the Law and Treasurer's Committee, these committees, after sub-committing, returned a report to the Council, which was approved of by the Magistrates and Council on 2d October 1838. The report of the sub-committee so approved of, gave the "Council's proposed mode of adjusting the principal debts, which they had no doubt would be satisfactory to all the parties interested." The adjustment in reference to Paul's Work was, in the words of the report, this :

"The debt due to the undertakers of Paul's		
Work is . . . . .	£3215	0 0
Interest whereon was paid to 1st August		
1833, . . . . .	£21	6 11 $\frac{6}{12}$
And payment from ale-duty valued		
as at 1st June 1833, . . . . .	268	15 10 $\frac{9}{12}$
Sum of these, . . . . .	<u>290</u>	<u>2 10<math>\frac{3}{12}</math></u>
Leaves of reduced capital the sum of	£2924	17 1 $\frac{9}{12}$
The dividends set apart, but not paid, are—		
1. From ale-duty, . . . . .	£73	18 10 $\frac{9}{12}$
2. From the ordinary funds of		
the city, . . . . .	<u>406</u>	<u>5 9<math>\frac{6}{12}</math></u>
Together, . . . . .	£480	4 8 $\frac{3}{12}$
Sum required to restore the principal sum as		
above is . . . . .	290	2 10 $\frac{3}{12}$
Which leaves of dividends payable after restoring		
the principal sum, £190, 1s. 10d. . . . .		
"Sum of principal, . . . . .	£3215	0 0"

The final adjustment of the several mortifications claimed was, in the words of the report, this :

"The result of the accounting, as between the city and charity		
workhouse, is, that at present there is due to the charity		
workhouse of <i>interest</i> at 1st August 1837 :		
1. On the sum of £727, 15s. 6 $\frac{8}{12}$ d., . . . . .	£30	14 0
2. On the sum of £3215 of Paul's Work Mortification, . . . . .	190	1 10
Carried forward, . . . . .	<u>£220</u>	<u>15 10</u>



	Brought forward,	£220	15	10
3.	On the sum of £601, 15s., per minute of 21st September 1838,	79	14	7
4.	For Forglen's Acre,	10	0	0

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\* "Total amount of interest due by the city  
as at 1st August 1838, £310 10 5"

"The *future annual payments* to be made by the city to the charity workhouse will be as follows :

1.	<i>Permanent</i> annuity on £648, 2s. 6 $\frac{1}{2}$ d., at 3 per cent., is	£19	8	10
2.	Interest on £79, 12s. 11 $\frac{3}{4}$ d., to be invested at 3 $\frac{1}{2}$ per cent., is	2	15	6
These two sums make up the mortifications payable to the kirk treasurer, amounting to £727, 15s. 6 $\frac{3}{4}$ d.				
3.	<i>Permanent</i> annuity on the sum of £2924, 17s. 1 $\frac{9}{12}$ d., at 3 per cent., is	87	14	10 $\frac{1}{2}$
4.	Interest on £290, 2s. 10 $\frac{3}{12}$ d., to be invested at 3 $\frac{1}{2}$ per cent., is	10	3	1
These two sums make up the debt due to the undertakers of Paul's Work, amounting to £3215.				
5.	<i>Permanent</i> annuity on the balance of £601, 15s., for which a bond will fall to be granted in terms of the Agreement Act, bearing interest at 3 per cent., is	18	1	0
6.	For Forglen's Acre,	10	0	0

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Total amount of future annual payments to be made by the city, £148 3 3 $\frac{1}{2}$

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This report was prepared with anxious deliberation. It is signed by Mr Robert Johnston junior, as convener of the sub-committee ; and the states annexed to the report, exhibiting the results in figures, bear the signature of Mr Duncan Maclaren, convener of the committee.

On 30th July 1841, the matter of the workhouse claims was again considered in the Treasurer's Committee of the Council, and the minute of that committee bears that the above state having been communicated to the committee of the city's creditors, their clerk had intimated that, on 12th

November 1838, the committee had approved of the arrangement then proposed—and which was exactly the same with that now contemplated—that “the attention of the committee was called to the sum of £605, 7s. 11½d., ranked as a debt against the city in name of the kirk treasurer, and to another sum of £2924, 17s. 1½d., ranked in name of the undertakers of Paul’s Work, and it was stated that bonds corresponding to £600 of the first-mentioned debt, and to £2920 of the second, had been prepared after the passing of the Agreement Act, and were still in the city’s possession, neither these nor the coupons having been issued in consequence of arrestments” laid in the city’s hands against the charity managers. “It was explained that the original capital of these two debts had been £727, 15s. 6½d. and £3215 respectively, and that their amount had been reduced to the sums ranked, by reason of the payments made on account thereof from the ale-duty, which, when the ale-duty ceased, and its debts were added to the common debts of the city, were imputed *pro tanto* of the capital. It was stated, that of these ale-duty payments, there remained in the hands of the city £105, 12s. 5½d. (bank interest included), which was not paid at the time by reason of the arrestments; and that the original capital of various sums mortified in the hands of the city had been restored after the Agreement Act, but it did not appear to the committee to be necessary to do so, in the case of the two debts now under consideration, to a greater extent than the above £105, 12s. 5½d., which must be considered as capital, and dealt with accordingly.

“The accountant submitted to the committee a note, shewing the payments which will fall to be made to the managers of the workhouse, if they shall agree to the proposed settlement, and the arrestments shall be withdrawn.

“These are :

1. The fractional part of the debt of £601, 15s.,	£1	15	0
2. The dividends and bank interest mentioned			
above,	91	0	8
	<hr/>		
Carried forward,	£92	15	8

	Brought forward,	£92	15	8
3.	Certain dividends from the city's funds, accruing at and prior to 1st August 1838 on the debts of £605, 7s. 11 $\frac{2}{12}$ d. and £2924, 17s. 1 $\frac{9}{12}$ d., consigned in the Bank of Scotland after the passing of the Agreement Act, also by reason of the arrestments,	530	10	4 $\frac{3}{12}$
4.	Three years' coupons or annuities, from 1st August 1838 to 1st August 1841, on the bonds for the sums of £600 and £2920 respectively,	370	16	0
5.	Four years to Whitsunday 1841 of the feu-duty payable by the city for Forglen's acres,	40	0	0
Total,		£1034	2	0 $\frac{3}{12}$

“The committee direct a copy of this minute to be transmitted to the managers of the charity workhouse, and that they be informed, that if they shall procure the consent of their creditors to the withdrawal of the arrestments, there will be delivered to them the bonds of annuity, corresponding to the £600 first before referred to, and payment made of the sum of £1034, 2s. 0 $\frac{3}{12}$ d. above detailed, in order that the latter sum, and the value of these bonds when converted into cash, may be applied in reducing the amount of debt due by the workhouse. Provided always that a mutual discharge shall be executed between the city and charity workhouse of their respective claims.

“With regard to the fractional parts of the debts of £605, 7s. 11 $\frac{2}{12}$ d., and £2924, 17s. 1 $\frac{9}{12}$ d., to the bonds of annuity corresponding to the sums of £600 and £2920, and to the sum of £105, 12s. 5 $\frac{3}{12}$ d. of payments from the ale-duty to account of the original capital of these debts, the committee conceive, that as these are moneys mortified for special purposes, *to the annual produce of which alone the managers have right under the contract of 1740*, it is the duty of the magistrates to retain the bonds in their own hands, to invest the fractional parts of the debts, and the foresaid sum from the ale-duty, and *to pay over the proceeds to the workhouse* half-yearly as they shall arise.”

This proposal of 30th July 1841, having been approved of by the Council, and communicated, along with the relative states made up by the city's accountant, to the charity managers, was accepted by the workhouse managers, who, on 2d June 1842, approved of the draft discharge, and authorised the chairman of the Finance Committee to sign it in behalf of the managers.

On 28th June 1842, the charity managers and the city settled accounts to that date, in terms of the accepted proposal, the managers receiving from the city six bonds of £100 each	.	.	.	.	£600	0	0
Cash	.	.	.	.		1	15 0
Dividends	.	.	.	£91	0	8	
Interest to date	.	.	.	2	12	9	
					<hr/>		
						93	13 5
					<hr/>		
						£695	8 5

and granting a mutual discharge, by which the workhouse managers discharged the city of the annuity per £200, and of the sum and bonds received, *but nothing else*; and, on the other hand, the Council discharged the charity managers of the debt due to them for compensation paid to St Cuthbert's parish under the Royalty Extension Acts, and in this discharge the city creditors joined.

On same 28th June 1842, the city, in farther implement of said accepted proposal, *paid to the charity managers, on their receipt, the dividends due on the mortified moneys before specified*, with interest to date of settlement, and five years arrears of feu-duty due by them for Forglen's Acre. This settled up the *revenue* to that date, leaving due, *Capital Sums* "invested on behalf of the Edinburgh Charity

Workhouse in city bonds for Paul's Work							
Mortification"	.	.	.	£2920	0	0	
Mortification per ranking for the kirk treasurer,				600	0	0	
For behoof of charity workhouse,	.	.	.	200	0	0	
					<hr/>		
						£3720	0 0
					<hr/>		



" Yielding an annual revenue of . . .	£111 12 0
" Payable, half-yearly, in February and August, and feu-duty, Forglen's Acre, payable at Whitsunday, . . .	10 0 0
<hr/>	
" <i>Making the Total Annual Revenue,</i>	£121 12 0"

On the 11th October 1842, the treasurer's committee review the workhouse estimates for the then current year, and remark thereon—objecting thereto, as there "were excluded from their estimate for the current year the revenue derivable to the workhouse from the settlement of those (the city's) accounts," amounting to £121, 12s. *per annum in perpetuity*—being, as above stated :

Revenue from Paul's Work, &c., . . .	£111 12 0
Feu-duty, Forglen's Acre, . . .	10 0 0
<hr/>	
	£121 12 0

The Council approved of the report, and directed copies of it to be transmitted to the managers of the charity workhouse.

On 17th April 1843, the action of reduction and declarator at the instance of the Council was raised against the workhouse managers, and, on 25th May 1844, decree of reduction and declarator was pronounced *in foro*, and the Poor-law Act came into operation in August 1845, as already mentioned.

From the institution of the charity workhouse, down to the term of Lammas 1851—that is, for 105 years before the passing of the Poor-law Amendment Act, and for *six years thereafter*—the Council paid the annual revenue from Paul's Work, and other mortifications, to the charity managers and their successors—being the Council themselves from the date of their decree till August 1845, and the Parochial Board thereafter ; and that revenue was annually applied, along with the other poor's funds raised by assessment and otherwise, to, and for the use of the city common poor. But in the year 1851, the Council, on a report by the clerk that the term for which the revenue of Paul's Work mortification had been granted to the poor had long since elapsed, ordered that revenue to be

paid and accounted for in future to Trinity Hospital, and it has accordingly been so paid and accounted for since Lammas 1851.

This matter having been investigated on the part of the Poor's Board by the Law Committee, was reported on to the Board along with the question as to the poorhouse grounds—the report approved of—a claim made—conference invited for amicable arrangement—the claim sent to the Law Committee of the Council, and a report returned, as has been mentioned. The report, refusing to entertain the claim, comes up for consideration of the Council at next meeting, along with the motion of which I gave notice at last meeting quoted above.

I did not concur in that report, for the following among other reasons : (1.) It appeared obvious to me that whatever was the original constitution of the "Hospital of Our Lady of Leith Wynd," that of Saint Paul's Work was undoubtedly one for behoof of the poor. The first grant of that Work by the crown to the city has not been recovered ; but the confirmation of it, and the terms of the grant "of new," in 1612, "for sustaining of the aged, decripp'd, orphans, and poor within the said burgh and hospital thereof," leave no doubt on the mind of any unprejudiced person that Saint Paul's Work was a poor's grant by the Crown to the Council. It became afterwards apparently an industrial charity school. The Council made it so, and their right to make it so was confirmed by the Court. It afterwards became the first charity workhouse in the city. The Council made it so. As such it was accepted by the legislature in lieu of an obligation on the Council to pay £300 per annum to maintain the common poor under the ale-duties act. The Council's right to make it so has thus been confirmed by statute. The entire poor's funds and property, in 1740, having been conveyed to the managers of the new charity workhouse on its institution, the revenues of Paul's Work fell under that contract, and these revenues having been paid to that charity, and to the use of the poor from that date till the passing of the Poor-Law Act in 1845, and for six years thereafter, apart altogether from any other matter of contract, as poor's

funds, passed to the Board by the Poor-law Act, and it was not, and is not, in the power of the Council thereafter to withdraw the same. (2.) But, while that is so in reference to the subjects of the original grant, it is, if possible, more certainly so in reference to the £2000 of the fund claimed which came from Mr Johnston. £1000 of it was given "to sett the poor of ye said city at work," the interest "to be distributed among ye poor of ye said cittye yearly." The other £1000 "towardses the reliefe of the poore people of the said cittie of Edinburgh in perpetuitie"—both grants being purely poor's grants—to the Council, who were then the poor's administrators. The Council properly voted the money to Paul's Work, the then city workhouse, and the proceeds continued thereafter to be applied, in terms of the grant, in setting the poor of the city to work, and in relief of the poor of the city, for years after the passing of the Poor-law Act, and that act carried the administration of this fund from the Council to the Poor's Board. But this question need not be taken on my statement of it. The town of Dundee got £1000 of Mr Johnston's money to be applied "in perpetuitie for ye yearly maintenance of the aged and impotent people of the said town of Dundee." They employed it, with other funds, in the purchase of Monorgan's Croft. In a question between the ministers and Council of Dundee, the House of Lords, on 24th July 1861, found that the legacy of £1000 was received "to be employed by the provost and bailies of Dundee in the yearly maintenance of the aged and impotent people of the said town, and that the annual interest of £1000 must be held applicable to that purpose," and that "the interest of that sum was to be strictly so appropriated." The Parochial Board of Dundee, having consulted leading counsel, have got an opinion that the poor are entitled to the interest of that fund, and the Board to the administration of it; in short, that the legacy, as held in the House of Lords, is operative—that the "aged and impotent" of the grant are the legal poor—and that the fund passed, by the operation of the Poor-law Act, to the Parochial Board. (3.) But the question did not appear to me to be one of constitutional right or quality alone; it is one of

special contract between the Council and the poor's trustees. In settling the city debts in 1838, the Council admitted and ranked this as one of them. The city and the city creditors admitted the poor's claim and ranking—the Council proposed the settlement—the Board accepted the proposal—the city creditors consented—all parties interested agreed; and on the agreement settled. The Council homologated the settlement. They paid the interest, made payments to account of principal, and executed discharges, on the faith and in implement of it, and the matter of the poor's right to this mortification thus became, by deliberate contract, a settled transaction, which it was not in the power of this Council legally to open up. Any attempt now to do so, can only in my humble apprehension, result in loss to the Corporation of the expenses to be incurred on both sides. (4.) It also appeared plain to me that the Law Committee had not sufficiently appreciated and met the anxiety of the Board to settle amicably. That if they had, the committee would have met them in the same spirit, and at least have reported in favour of the proposal of the Board to refer this question to the Solicitor-General, the senior adviser of the Council, or to have left it for after adjustment between the Board and Trinity Hospital. That proposal for the Board made in committee was fair and reasonable, and ought to have been accepted. In place of entertaining it, however, the committee refuse the claim point-blank, and without reason assigned, leaving no adjustment of the question open to these to public trusts, but an action of declarator in the Court of Session, at, it may be, thousands of expense to the community. But (5.) even assuming that this fund had been properly voted to, and accounted for, to Trinity Hospital, it is by no means clear to me that it is not nevertheless poor's funds proper in the sense of the statute, which, with Trinity Hospital and its funds, belong to the Parochial Board. For

### III. CLAIM OF POOR'S BOARD TO TRINITY HOSPITAL, AND THE WHOLE FUNDS THEREUNTO APPERTAINING.

On 12th November 1567, King James VI., "moved by



fervent and zealous purpose to support and assist the poverty, penury, and want of many and diverse aged and impotent persons, who in their old age have lost their means and estates by and through the events of adverse fortune, so that they may not perish and die through extreme hunger, penury, and want of necessary sustenance ; and therefore, moved by piety and good conscience to afford them such help and assistance as their want and need require ; as also understanding that this purpose cannot be properly carried into effect without our supplement and authority, and that Sir Simon Prestoun of that ilk, knight, has the intention and deliberate, firm, and set purpose to build, found, and with all care and diligence, endow an hospital with reasonable support, for such *foresaid* honest, poor, and impotent persons, aged and sick, indwellers and inhabitants within our burgh of Edinburgh ; *and also for such other old indigent and impotent people as shall be found fit objects for receiving such benefits and charity in the said hospital so to be founded* ; that the said purpose and work is not only good and divine, but also, being willing to set the example to our liege subjects to engage in the like purposes and works ; " have deemed it expedient and necessary to gratify the said Sir Simon, provost of our said burgh of Edinburgh, with the donation of such place now vacant in our hands, and at our gift and disposal, as shall be most fit and convenient for building, erecting, repairing, and performing the said hospital, with houses, biggings, and yards thereof, where there seems to be the greatest concourse and passage of people, as well strangers as townsmen, *by whose daily alms the said hospital may be benefited* ; therefore we " have given, granted, and disposed, as we hereby give, grant, and dispoine to the said Sir Simon Preston, present provost of our said burgh of Edinburgh, and his successors, the provosts, bailies, councillors, and *community* of the said burgh for the time being ; all and whole that church, called the Collegiate Church of the Trinity," with " Trinity Hospital, lying contiguous to the said college kirk," with kirkyard, houses, biggings, orchards, gardens, crofts, dovecot, and pertinents, " for the building and construction of the said hospital, houses, yards, and policies thereof, for *the*

*maintenance of the poor and sick*, to be placed by them therein only, *and for no other use*; to be held" of the crown for payment of a silver penny, if asked only, but "providing, however, that they shall be bound to apply the places and others foresaid to the *forsaid use and no other*."

The use for which this hospital was so founded, and so to be sustained by public alms, was "to support and assist the poverty, penury, and want, of many and diverse aged and impotent persons;" otherwise called in the foundation "honest, poor, and impotent persons, aged and sick, indwellers and inhabitants within our burgh of Edinburgh," and also *such other* "old indigent and impotent people as shall be found fit objects for receiving such benefits and charity in the said hospital."

What was then "our burgh of Edinburgh," is now "the city parish of Edinburgh." The Corporation was at that time bound to support "crucked focke, seik focke, impotent focke, and weak focke;" and in 1579—twelve years after this charter—the class of paupers so to be supported and housed by the Corporation, was defined by Act of Parliament to be "all aged, purc, impotent, and decayed persons," "whilkcs of necessitie man live be almes." The grant of Trinity Hospital, and all previous grants to "the poor, aged, decrippcd, and indigent persons, orphans and infants destitute of parents, within the said burgh, of whatsoever dates, tenor, and contents the same be," was confirmed by the crown, on 7th August 1612, by the great charter of kirk livings, in favour of the Council.

It is thus seen that the poor were by

STATUTE LAW.	TRINITY CHARTER, 1567.	NEW GRANT, 1612.
1. Cruicked folk.		3. Decrippcd.
2. Sick folk.	4. Sick.	
3. Impotent folk.	2. Impotent.	
4. Weak folk.		5. Orphans and infants destitute of parents.
Act 1579.		2. Aged.
5. Aged.	3. Aged.	1. Poor.
6. Poor.	1. Poor.	
7. Impotent; and,	2. Impotent.	
8. Decayed persons, "which, of necessity, must live by alms."	5. Indigent people "as shall be found fit objects for receiving such benefits and charity."	4. Indigent persons "within the said burgh."

and that not one feature in the legal poor is wanting in the charter of erection, or in the confirmation thereof; all three being self-evident descriptions of one class—the common poor. And while the beneficiaries under the foundation of Trinity Hospital, and the beneficiaries under the Poor-law Acts then in operation, were thus identical, the trustees were the same in both, and hence the foundation was just one for the benefit of the common poor then in the city parish of Edinburgh. Both were aged, poor, impotent, and indigent indwellers within the same bounds, as shall be found to be fit objects of charity, or who of necessity must live by alms.

Trinity Hospital has existed and been administered from the date of the foundation to the present time. The Poor-law Act of 1845 transferred all property held by the Magistrates and Council for the benefit of the poor to the Poor's Board. I cannot doubt that Trinity Hospital and its funds were so transferred; and that the Parochial Board of the city parish have now the only legal right to administer that fund; and hence, assuming that the revenues of Paul's Work have been properly paid over to Trinity Hospital, that is no reason why the claim of the Board to these revenues should be refused, seeing that the hospital itself and its revenues have, since the passing of the Poor-law Act in 1845, been the property of that Board.

But this is a matter in which the Corporation, as such, have really no interest. The question is between Trinity Hospital and the Board; and the Law Committee, in my opinion, ought to have reported in favour of the Board's suggestion, to remit the claim of the Poor's Board for the mortifications to Trinity Hospital Committee, for adjustment and settlement; but not having done so, and without reason or rational inquiry having point-blank refused the claim—and thereby sent these public trusts into what cannot fail to be a lengthened and expensive litigation—to be conducted on both sides at the expense of the community of the city of Edinburgh—I respectfully but decidedly dissent from the report.

Sensible of the importance of the questions at issue to the

community of the city of Edinburgh, and feeling, for the reasons stated in the outset, that the deliberation and consideration their importance requires could scarcely be expected to be got for them at the end of a lengthened sitting of Council, on a motion for approval or disapproval of the committee's report, I gave notice of the motion already quoted, in the hope that thereby the whole matters might be deliberately brought up, considered, and disposed of in the face of the community, who are the constituents alike of the Council and Parochial Board. That motion is self-explanatory after the narrative of facts now given; and, whatever the result of it, I conclude by beseeching your Lordship and the Council to deal with the whole subject on its merits, and to dispose of it without delay, but only after a careful consideration thereof, and of the interest of the trusts, beneficiaries, and community involved, and a due regard to the consequences of litigation.

I am not aware what the Council have ever *gained*, but I see what the Corporation *lost* in one single case by refusing an extrajudicial settlement of it. A question arose between the Corporation and the Board of Ordnance as to their rights in the compensation got from the Edinburgh and Glasgow Railway for running their line through West Princes Street Gardens. The Board of Ordnance offered terms of arrangement which would have left the Corporation all the ground to the north of the railway, and all the money they had got from the Company. The Corporation refused these terms, and the case has now been settled by a judgment of the House of Lords. The loss to the city by refusing this amicable arrangement was :

Expenses paid to the agents of the Board of Ordnance for Court of Session proceedings,	£1300	0	0
Expenses of appeal in the House of Lords, taken against the report of the Law Committee, to be paid,	1000	0	0
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Carried forward,	£2300	0	0



Brought forward,	£2300	0	0
Expenses to the agents for the city, paid and to be paid, must equal the above, .	2300	0	0
Money got from railway, falling to be paid to the Board of Ordnance, . . .	700	0	0
Ground the city would have got, but which now goes to the Crown probably, . . .	350	0	0
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Loss of cash and property to city by refusing the amicable arrangement, somewhere about . . .	£5650	0	0

For the reasons which influenced the Parochial Board in desiring to remove the poorhouse and imbecile wards out of the city, I refer to a statement made by me at the ward meeting on 18th, and reported in the *Courant* of 21st, October 1861; and to the proceedings already adverted to of the public meeting, approving of the Board's proposal, held on the 28th of that month, reported in the same paper of the 29th.

D. CURROR.

